STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North County Communications	**:**	
Corporation	**:**	
-vs-	**:**	
Verizon North Inc. and Verizon South Inc.	**:**	**02-0147**
	:	
Complaint pursuant to Sections 13-514,	**:**	
13-515 and 13-516 of the Public Utilities	**:**	
Act and 83 Ill. Admin. Code Part 766.	**:**	

ORDER

DATED: October 6, 2004

EXHIBIT 12

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North County Communications Corporation	:	
-vs-	:	
Verizon North Inc. and Verizon South Inc.	:	**02-0147**
	:	
Complaint pursuant to Sections 13-514, 13-515 and 13-516 of the Public Utilities Act and 83 Ill. Admin. Code Part 766.	:	

ORDER

By the Commission:

I. INTRODUCTION

On February 15, 2002, North County Communications Corporation ("NCC") filed with the Illinois Commerce Commission ("Commission") a verified complaint against Verizon North, Inc. and Verizon South, Inc. ("Verizon") pursuant to Sections 13-514, 13-515, and 13-516 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., and 83 Ill. Adm. Code 766, "Telecommunications Enforcement," ("Part 766"). Generally, NCC alleges that Verizon's failure to deal in good faith with NCC led to Verizon's failure and refusal to interconnect with NCC as required under the Telecommunications Act of 1996 ("TA96"), 47 U.S.C. 151 et seq., and resulted in a per se barrier to competition prohibited by the Act. As part of its complaint, NCC requested emergency injunctive relief pursuant to Section 13-515(e) of the Act. Based only on the complaint and Verizon's response to the request for emergency relief, the Commission entered an Order on February 20, 2002 denying NCC's request for emergency relief. NCC and Verizon both agreed to waive the statutory timeframe for complaints brought under 13-515.

Pursuant to due notice, status hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on February 26, March 25, April 19, June 14, July 24, September 30, October 30, December 20, 2002, January 9, January 24, February 21, February 25, March 5, May 21, and June 4, 2003. After several delays primarily concerning discovery issues, evidentiary hearings were held on November 12 and 13, 2003. Counsel for NCC and Verizon entered appearances at each of the hearings. Todd Lesser, the President of NCC, and Douglas Dawson, the founder and owner of CCG Consulting, Inc. of Riverdale, Maryland, testified on behalf of NCC. Diane McKernan, an Account Manager with the Verizon Wholesale Marketing Group of Verizon Services Corporation, Charles Bartholomew, a Specialist in Sales Support with the Verizon Wholesale Marketing

Group of Verizon Services Corporation, and Kathryn Allison[1] testified for Verizon. No petitions to intervene were received. Commission Staff did not participate in this matter. The record was marked "Heard and Taken" on May 14, 2004. NCC and Verizon each filed an Initial Brief and Reply Brief.

NCC is a California corporation with its principal place of business at 3802 Rosecrans Street, Suite 485, San Diego, California 92110. On April 11, 2001 in Docket No. 00-0818, the Commission granted NCC a Certificate of Interexchange Service Authority, a Certificate of Service Authority, and a Certificate of Exchange Service Authority authorizing it to provide competitive resold and facilities-based local and interexchange telecommunications services.

Verizon North, Inc. is a Wisconsin corporation with its principal place of business in Illinois located at 1312 East Empire Street, Bloomington, Illinois 61701 and is an incumbent local exchange carrier ("ILEC"), authorized to provide local and intraMSA interexchange telecommunications service in Illinois. Verizon South, Inc. is a Virginia corporation with its principal place of business in Illinois also located at 1312 East Empire Street, Bloomington. Verizon South, Inc. is an ILEC as well, and, like Verizon North, Inc., is authorized to provide local and intraMSA interexchange telecommunications service in Illinois.

II. GOVERNING LAW

Section 13-514 prohibits anti-competitive behavior in order to further the goals of the TA96 and facilitate the development of a competitive telecommunications market in Illinois. Section 13-514 provides:

> A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:
>
> (1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;
>
> (2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier;
>
> (3) unreasonably denying a request of another provider for information regarding the technical design and features, geographic coverage, information necessary for the design of equipment, and traffic capabilities of the local exchange network except for proprietary

[1] Prior to the evidentiary hearings, Ms. Allison retired from her position as a Senior Product Manager in the Local Interconnection Group of Verizon Services Corporation. Verizon, however, retained her services for purposes of this proceeding in light of her interactions with NCC while employed with Verizon.

information unless such information is subject to a proprietary agreement or protective order;

(4) unreasonably delaying access in connecting another telecommunications carrier to the local exchange network whose product or service requires novel or specialized access requirements;

(5) unreasonably refusing or delaying access by any person to another telecommunications carrier;

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

(7) unreasonably failing to offer services to customers in a local exchange, where a telecommunications carrier is certificated to provide service and has entered into an interconnection agreement for the provision of local exchange telecommunications services, with the intent to delay or impede the ability of the incumbent local exchange telecommunications carrier to provide inter-LATA telecommunications services;

(8) violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers;

(9) unreasonably refusing or delaying access to or provision of operation support systems to another telecommunications carrier or providing inferior operation support systems to another telecommunications carrier;

(10) unreasonably failing to offer network elements that the Commission or the Federal Communications Commission has determined must be offered on an unbundled basis to another telecommunications carrier in a manner consistent with the Commission's or Federal Communications Commission's orders or rules requiring such offerings;

(11) violating the obligations of Section 13-801; and

(12) violating an order of the Commission regarding matters between telecommunications carriers.

Section 13-515 concerns enforcement of Section 13-514, while Section 13-516 establishes the remedies available for violations of Section 13-514. Part 766 sets forth additional procedures for filings under Sections 13-515 and 13-516.

III. PARTIES' POSITIONS

The disputes between NCC and Verizon span several years and multiple states. Generally, NCC maintains that Verizon's practices throughout its service areas have thwarted its ability to interconnect in a timely and/or reasonable manner. Verizon maintains that the practices and policies of which NCC complains do not exist. Both accuse the other of trying to confuse the issues and facts for their own gain. That the parties do not trust each other is abundantly clear throughout the voluminous record. It is with these prefatory remarks that the search for the truth begins.

A. NCC's Position

NCC's complaint begins with its December 7, 2001 e-mail request to Verizon for interconnection in Illinois. (See NCC Exhibit 1, Attachment C-032) Mr. Lesser expresses in his e-mail that NCC is interested in offering service in Leaf River, Illinois. Although Verizon is not the ILEC in the Leaf River Exchange, he notes that all of the long distance traffic of the ILEC (which is the Leaf River Telephone Company) uses Verizon's DeKalb tandem. With regard to long distance traffic, he states that NCC will need less than 28 T1s[2] but that NCC could still function with four or fewer T1s. As for local traffic, Mr. Lesser indicates that NCC will carry very little local traffic and will initially only order two T1s. Mr. Lesser asks if Verizon is going to require a fiber build to interconnect and how much capacity Verizon is willing to provide without requiring a fiber build. Mr. Lesser also asks Verizon to recommend locations for NCC's switch that would facilitate and accelerate the interconnection process. If it is not realistic to expect that Verizon could provide T1s in 66 days, he states that his second choice is to interconnect with Qwest in Iowa. Mr. Lesser sent his e-mail to his Account Manager, Diane McKernan,[3] as well as nine other Verizon employees, including Steven Hartmann, Verizon's Senior Counsel for Carrier Relations.

The complaint states that on the next business day, Monday, December 10, 2001, NCC received a response from Verizon indicating that NCC's e-mail had been forwarded to Verizon's "technical support division." The following day, December 11, 2001, NCC alleges that Verizon's delay tactics began in earnest when Ms. McKernan informed NCC that Verizon had no record of an interconnection agreement with NCC and could not proceed with the interconnection request. NCC considers this response evidence of anti-competitive behavior. According to the complaint, NCC informed Verizon later that same day of its intent to opt into an existing interconnection agreement and requested that Verizon e-mail to it a list of approved interconnection agreements.

On December 18, 2001, Verizon provided NCC a list of seven Commission-approved interconnection agreements. In response to a request for electronic copies of the agreements, Mr. Lesser complains that Verizon told him to contact the Commission for copies without mentioning that electronic copies are on the Commission's web page. On January 13, 2002, NCC requested to opt into the interconnection agreement

[2] A T1, which stands for Trunk Level 1, is a digital transmission line which is the equivalent of 24 voice-grade channels.

[3] In an e-mail dated January 17, 2001 regarding NCC's efforts to interconnect with Verizon in West Virginia, Ms. McKernan informs Mr. Lesser that she will be his "Account Manager for all of [NCC's] Verizon needs coast to coast." (See NCC Exhibit 1, Attachment G002) Mr. Lesser states that Ms. McKernan acts as NCC's account manager in Illinois, West Virginia, New York, Oregon, and California.

between Verizon and AT&T Communications of Illinois. On April 10, 2002 in Docket No. 02-0181, the Commission entered an Order approving the interconnection agreement between NCC and Verizon. According to Verizon's answer to the complaint, the interconnection agreement became effective on February 5, 2002.

Also on December 11, 2001, Mr. Lesser sent to Ms. McKernan an e-mail explaining that what he meant to express in his December 7, 2001 e-mail is that they should not even bother negotiating an interconnection agreement if Verizon is going to require a fiber build or the use of a wholesale fiber multiplexer[4] for NCC to interconnect instead of allowing NCC to interconnect with the same facilities that Verizon uses for retail customers. (See NCC Exhibit 1, Attachment C-036) Mr. Lesser sent a copy of this e-mail to Mr. Hartmann and other Verizon employees as well. Mr. Lesser states that he wanted to avoid having to wait for the installation of a new multiplexer for NCC's use because he feared that doing so would delay NCC's market entry by six to nine months.

According to the e-mail chain that followed, Ms. McKernan consulted with others at Verizon, including Charles Bartholomew, to determine the answer to Mr. Lesser's interconnection inquiry. (See NCC Exhibit 1, Attachments C-033 through C-035) Mr. Lesser acknowledges that Mr. Bartholomew answered Ms. McKernan's request for assistance in a December 11, 2001 e-mail in which Mr. Bartholomew stated, "VZwest does not require a fiber build in order to interconnect." [5] (Id., Attachment C-034) In addition to sending his response to Ms. McKernan, Mr. Lesser points out that Mr. Bartholomew also sent his response to two other Verizon employees. The following day, however, Mr. Lesser observes that Ms. McKernan asked Mr. Bartholomew a follow-up question that perfectly framed the issue in Mr. Lesser's mind. Ms. McKernan stated and asked, "This customer is interested in using an existing enterprise services [multiplexer] at the location. Would we be able to place the trunks on that type of facility? Verizon East has a policy against such an arrangement." (Id.) On December 13, 2001, Mr. Lesser relates that Mr. Bartholomew answered Ms. McKernan's follow-up question by stating, "We received word from Product Management that the Verizon West policy is the same as the east. The [competitive local exchange carrier ("CLEC")] may not terminate interconnection facilities on a retail facility." (Id., Attachment C-033) Mr. Lesser claims that this response describes perfectly the Verizon policy that NCC has encountered. Later that same day Mr. Lesser reports that he received a response from Ms. McKernan stating that the Verizon policy in Illinois on terminating interconnection trunks on "Enterprise Facilities" is the same as Verizon's policy in eastern states. NCC points out that Ms. McKernan clearly states, "We will not terminate interconnection trunks on a retail/enterprise facility." (Id.)

Through this and prior experiences with Verizon, NCC understands Verizon to require a "wholesale fiber build-out" in order for NCC to interconnect with Verizon. NCC considers the construction of such a facility unnecessary, and, moreover, asserts that

[4] A multiplexer consists of electronic equipment that "multiplexes" or combines and transmits two or more signals over one communications circuit. The circuit may be analog or digital.

[5] Ms. McKernan states that "VZwest" is an abbreviation for Verizon West, which is used to describe the former GTE operating territories.

Verizon made up the term. NCC argues that Verizon's distinction between retail and wholesale facilities (in the context of interconnection) is something new in the industry, and is simply a ploy on Verizon's part to excuse and delay its obligation to interconnect with NCC at any facility where sufficient capacity exists. This distinction, NCC continues, came about not as a result of any "technical feasibility" issue, but rather reflects Verizon's own corporate "policy." NCC maintains that no provision is made in the Act or the TA96 for such a unilateral "policy" as a legitimate basis for an ILEC failing to fulfill its obligation to interconnect. NCC contends that Verizon is perfectly capable of connecting with NCC at any facility with capacity and enable NCC to serve customers and promote the pro-competitive goals of the Act and the TA96. According to NCC, Verizon deliberately chooses not to do so in order to thwart competition at every level and cause damage to NCC and rate-payers. Mr. Lesser maintains that in this instance Verizon stood by its policy of not interconnecting CLECs on facilities shared by retail customers until NCC filed its complaint with the Commission. He testifies that after the filing of the complaint, Verizon moved "really fast."

Mr. Lesser's prior experiences include interconnecting with SBC in San Diego, Los Angeles, Sacramento, and San Francisco, California, with Qwest in Portland, Oregon, Vancouver, Washington, Phoenix and Tucson, Arizona, and with Verizon in Charleston, West Virginia and DeKalb, Illinois. He testifies that interconnection with SBC and Qwest has routinely taken approximately 30 days. Both of these carriers, he notes, allow interconnection at any technically feasible point, including over a multiplexer shared by multiple ILEC customers, including CLECs, long distance carriers, and retail end users. Mr. Lesser states that neither SBC nor Qwest has required the deployment of any separate "wholesale" or "dedicated" entrance facilities, as he says Verizon calls them, to interconnect. Rather, he continues, SBC and Qwest use existing capacity on any multiplexer, shared or otherwise, to interconnect with NCC. If additional capacity is later necessary, Mr. Lesser testifies that it is built, but only on an as needed basis.

Mr. Dawson corroborates Mr. Lesser's assertion that NCC has interconnected with SBC and Qwest without problems at combined wholesale/retail facilities in the same manner that it has requested interconnection with Verizon. Mr. Dawson is unaware of any other regional bell operating company that segregates its "retail" and "wholesale" facilities. He states further that neither SBC nor Qwest has ever raised any issue about the ability to interconnect at such facilities and apparently they have no "policy" prohibiting such connections as does Verizon. Mr. Dawson also testifies that he has other clients who have obtained interconnection over combined facilities from BellSouth.

In contrast to his experiences with SBC and Qwest, Mr. Lesser asserts that in every jurisdiction where NCC has attempted to interconnect with Verizon, Verizon has taken the position that it will not interconnect with CLECs over shared facilities using existing capacity. He states that jurisdictions in which NCC has had problems during its attempts to interconnect with Verizon include West Virginia, New York, and Illinois. Instead of using existing spare capacity, Mr. Lesser contends that Verizon insists on building new dedicated multiplexer pairs with which to interconnect with CLECs. He maintains that this not only results in needless expense, but creates an extremely long delay in getting circuits turned up so that calls can be carried over the local interconnection trunks. In some instances outside of Illinois, he claims that interconnection has taken over a year to provide.

Mr. Lesser does not believe the claims by Verizon's witnesses that this situation simply stems from misunderstandings and miscommunications. In response to Ms. McKernan's claim she was using words and phrases that she did not understand or realize the significance of, Mr. Lesser points out that Ms. McKernan has over 20 years of experience in the telecommunications industry. He simply does not accept that someone with her background could be ignorant of such words and phrases, despite her statement that she only had a two or three day training course on CLECs. Moreover, Mr. Lesser continues, the fact that his e-mails to and from Ms. McKernan were also received by others at Verizon, including Mr. Hartmann, supports his claim that Ms. McKernan was not acting alone and that Verizon had full knowledge of the policies relayed by Ms. McKernan. Mr. Lesser avers that the experience of others involved in the e-mails also make it unlikely that this situation is the result of misunderstandings. He notes that Mr. Bartholomew also has over 20 years of experience with GTE/Verizon, which includes time as a central office equipment installer. For Mr. Bartholomew to misunderstand what Mr. McKernan was asking, as he contends he did, is simply not plausible, according to Mr. Lesser. Similarly, Mr. Lesser argues that Ms. Allison, with her more than 20 years of experience with GTE/Verizon, is also unlikely to have had the exact same misunderstanding as Mr. Bartholomew when he called her to confirm his understanding of what he thought Mr. McKernan was asking. Mr. Lesser adds that if there was doubt in the minds of anybody at Verizon who received the e-mails, they would not have guessed at what Ms. McKernan was talking about, as they have testified. Mr. Lesser believes that they would have simply asked Ms. McKernan what she meant.

Mr. Dawson also questions Mr. Bartholomew's interpretation of Ms. McKernan's question regarding interconnection at an existing enterprise services multiplexer. Mr. Dawson finds confusing Mr. Bartholomew's belief that Mr. Lesser was asking about connecting to a DS1 Primary Rate Interface ("PRI") or business dial-tone lines. Mr. Dawson points out that CLECs connect to Verizon using trunks. He explains that a trunk is a facility that is used to connect two carriers or connect two central offices within a single carrier's network. PRIs and business dial-tone lines, on the other hand, are tariffed retail products that Verizon sells to end user customers. According to Mr. Dawson, it would be impossible for a CLEC to connect with Verizon using an end user retail product. He testifies further that he is totally mystified why Mr. Bartholomew would have come to the conclusion that Mr. Lesser was asking about a retail product. Mr. Dawson notes that Mr. Lesser's original question to Verizon asked if a fiber build was necessary in order to connect with Verizon in Illinois. He states that Mr. Lesser asked this question because in other Verizon states, when he was not allowed to use an existing "retail" facility, he was told that instead he would have to wait until Verizon constructed fiber to his location. Mr. Dawson simply can not see how Mr. Lesser's question could have been interpreted to mean he would want PRIs or business dial-tone lines since no CLEC would ever want these.

If, however, the Commission accepts Ms. McKernan's claims of ignorance, NCC argues that a compelling case for negligence and unreasonable conduct can be made. NCC observes that Ms. McKernan never corrected her alleged miscommunication to Mr. Lesser. During the hearing in this matter, NCC points out that Ms. McKernan refused to concede that NCC could rely on the information she was providing (Tr. 657-658), which NCC notes is in contrast to the testimony she gave in West Virginia. (Tr. 658-661) When asked by the Administrative Law Judge why she felt comfortable using phrases that she was not 100% familiar with when trying to explain things to someone who was relying on the information she provided, NCC observes that Ms. McKernan replied, "I don't have a really good answer for that, I really don't know." (Tr. 693) Eventually, NCC continues, Ms. McKernan acknowledged that if she had some alleged confusion, perhaps the better course would have been to put technical support directly in contact with Mr. Lesser. (Tr. 697-698) NCC maintains that this conduct alone falls far below the "reasonable" standard. NCC relays that Ms. McKernan also attempted to convey a lack of adequate training by her employer to enable her to perform her duties in a competent manner, with no additional training being provided since the time her difficulties with NCC arose and became a matter of public record. (Tr. 694-697, 698-699) NCC contends that assigning a poorly-trained, ill-equipped salesperson as the gate keeper to a technical network through which NCC must pass if it is to compete effectively, as Congress, the Illinois General Assembly, and this Commission have previously decided was NCC's right, and then providing her with no further training is an affront to the citizens of Illinois and is the hallmark of an unreasonable impediment to the development of competition.

To better explain and place into context the frustration he feels toward Verizon, Mr. Lesser describes in detail in his direct testimony his experiences with Verizon in West Virginia. In July of 2000, Mr. Lesser states that he requested to opt into an existing interconnection agreement with Verizon. Not until two months later and after repeated calls by counsel did Verizon respond to NCC's request, according to Mr. Lesser. He also complains that several months following his request for T1s and after threats and numerous delays that he considers unreasonable, Verizon finally "turned up" one T1 on July 27, 2001. During his wait for interconnection in West Virginia, Mr. Lesser reports that on December 27, 2001 Ms. McKernan informed him that the location at which NCC wished to interconnect in New York is a "shared" multiplexer, which can not be used for wholesale services. (See NCC Exhibit 1, Attachment C-031) He also received an e-mail from Ms. McKernan on July 3, 2001 stating that Verizon "determined [NCC] needed to build an Entrance Facility because [NCC] could not use a non-wholesale market entrance" to interconnect with Verizon in West Virginia. (See NCC Exhibit 1, Attachment C-009) Mr. Lesser indicates that such experiences with Verizon in West Virginia, as well as New York, are consistent with Verizon's stated position that it will not terminate interconnection trunks on a retail/enterprise facility in Illinois.

Mr. Dawson confirms NCC's experiences in West Virginia. He testifies that NCC was initially denied interconnection for the same reasons as in this case and was not allowed to interconnect at a joint retail/wholesale facility. Instead, he continues, Verizon wanted NCC to wait for a fiber build to that facility to install a new "wholesale" multiplexer. Mr. Dawson asserts that the inability to interconnect at the retail facility caused a significant delay to NCC's entry into the marketplace. Only when NCC was on the verge of losing its NXX codes, he observes, did Verizon relent and allow interconnection the way NCC had been requesting for six months, albeit on what Verizon viewed as a temporary basis. Mr. Dawson reports that NCC has run across the same delay associated with Verizon's fiber build policy in New York and Illinois. He testifies that another CLEC client of his encountered the same problems with Verizon in Maryland.

Written statements by Verizon's Senior Counsel for Carrier Relations concerning the temporary interconnection arrangement that NCC obtained in West Virginia is what NCC believes is most damaging to Verizon's claim that no ban on interconnecting at retail facilities exists. NCC relates that its attorney sent a letter to Mr. Hartmann dated February 11, 2002 through which NCC attempted to establish a protocol for future interconnections in Illinois and other jurisdictions. (See NCC Exhibit 2, Attachment T) In light of its understanding that Verizon generally would not allow NCC to interconnect on facilities serving retail end-users, NCC indicated that it would be agreeable to locating its circuits on facilities serving retail end-users until Verizon completed installation of facilities dedicated to NCC. Once Verizon completed the installation of the dedicated facilities, NCC stated that it would be willing to migrate its circuits from the retail facility to the dedicated facilities. NCC based its proposal on the arrangement it arrived at with Verizon when it feared it would lose its NXX codes in West Virginia if it did not begin using them soon. NCC suggests in the letter that it is not willing to move its circuits from the retail facility to the dedicated facility in West Virginia unless Verizon agrees to its proposal.

In response to the letter from NCC's counsel, Mr. Hartmann sent a letter dated February 14, 2002 rejecting NCC's proposal. (See NCC Exhibit 2, Attachment S) Mr. Hartmann did not deny the existence of any prohibition on interconnecting at facilities serving retail customers. Instead, NCC reports, Mr. Hartmann writes,

> If NCC wants to litigate and/or arbitrate in Illinois or some other jurisdiction over what the "appropriate protocol" for interconnection should be, it should tee up the issue in ***that*** jurisdiction, ***not*** hold Verizon's network in West Virginia hostage in an attempt to extort concessions elsewhere. Indeed, backing out on NCC's agreement to cooperate with Verizon to move its interconnection trunks to the dedicated facility in West Virginia is a transparent litigation strategy that only serves to highlight why Verizon ***should not*** make special exceptions for NCC in the future. (emphasis in the original)

If the discriminatory policy that NCC alleges does not exist, NCC wonders why Mr. Hartmann, who represents Verizon on a national level, speaks of "concessions" and "special exceptions." NCC also asks why Mr. Hartmann refers to allowing NCC to interconnect at a retail facility as a "courtesy" elsewhere in his letter. NCC argues further that Mr. Hartmann's letter calls into doubt Ms. McKernan's claim that she made up the phrases she used and that this is all simply a misunderstanding.

Only after NCC initiated litigation against Verizon in West Virginia and Illinois, Mr. Lesser reports that Verizon denies the existence of any policy limiting CLEC interconnection to dedicated wholesale facilities. Specifically, he notes that on September 23, 2002, three days after Ms. McKernan submitted direct testimony in West Virginia, she sent him a e-mail stating:

> I am told there is no hard and fast "policy," but a general practice of using dedicated interoffice facilities to interconnect with other carriers (both IXCs and CLECs), since virtually all carriers in New York have large volumes of traffic that cannot be provisioned over shared loop facilities. This is not a "policy" but a fact. I have been informed that Verizon's technology and equipment deployment decisions for implementing initial interconnection trunking arrangements with a CLEC are made on a case-by-case basis. (NCC Exhibit 1, Attachment C-037)

Mr. Lesser denies ever hearing such a position from anyone at Verizon prior to his taking steps to end what he considers a discriminatory practice. Mr. Lesser's experiences in Illinois reinforce his belief that Verizon only changed its policy after the onset of litigation. At the time that he was informed that NCC could not terminate interconnection facilities on a retail facility, he claims that NCC was only seeking two T1s in DeKalb. (See NCC Exhibit 1, Attachment C-032) Despite the minimal number of T1s NCC requested, Mr. Lesser points out that he was still told that NCC may not connect to a shared facility and must wait until a dedicated facility is built.

Mr. Dawson objects to Ms. Allison's argument that NCC's experiences with Verizon in other states are irrelevant to this proceeding. He avers that it is this very history that led Mr. Lesser to ask more questions of Verizon up front in this case. Since Ms. McKernan was the nationwide representative for NCC in its dealings with Verizon, Mr. Dawson points out that there already was an established history between Mr. Lesser and Ms. McKernan. When Mr. Lesser asked if he was going to encounter the same problems in Illinois as he has encountered in other Verizon states, Mr. Dawson notes that the basic answer back from Ms. McKernan was that the same policies applied in Illinois as well. Although Verizon has backed down from its "retail/wholesale" distinctions to some extent, Mr. Dawson maintains that Verizon's "policies" were forefront in Mr. Lesser's mind when he sought to interconnect in Illinois. Because of the smallness of DeKalb, Mr. Dawson contends that Mr. Lesser was worried that he would not be able to find a "wholesale" location; in other words, a place where Verizon was already connected to other CLECs. Mr. Dawson states that the correspondence between Mr. Lesser and Verizon indicates that Mr. Lesser reluctantly accepted

Verizon's policy against locating at a "retail" location. Mr. Dawson argues that Mr. Lesser was merely trying desperately to find a location that did not violate this policy and that also had enough existing facilities so that he would not have to wait for a fiber augmentation before getting trunks. He states further that Verizon should not be surprised that Mr. Lesser asked for assistance in identifying acceptable interconnection locations in light of the restrictions that Verizon places on interconnection.

Mr. Dawson relies on his experience in the telecommunications industry and, in particular, his experiences with Verizon, to support NCC's position. His analysis of the dispute between NCC and Verizon begins with a discussion of Verizon's segregation of different classes of facilities. According to Mr. Dawson, Verizon distinguishes between "retail" and "wholesale" facilities. Before the advent of CLECs, he explains that Verizon interconnected with other carriers that consisted mostly of interexchange carriers and wireless providers. He states that most of these traditional carriers interconnected with the Verizon network at a few well-defined locations. For the most part, he continues, these types of carriers only sought interconnection at Verizon central offices—a practice which enabled Verizon to establish "wholesale" facilities at its central office hubs.

This interconnection pattern, Mr. Dawson adds, also means that in the vast Verizon network that the majority of fiber routes were to locations other than central offices and for the most part were easily categorized as "retail" facilities. He points out that such routes were thus fully dedicated to retail customers. Mr. Dawson asserts that the relatively small number of carrier circuits, the dedicated nature of these carrier circuits, and the concentration of these circuits at Verizon central offices made it easy for Verizon to identify carrier customers and to create a class of facilities dedicated to "wholesale." He notes further that this distinction in the past made it easy for Verizon to segregate work functions for administrative convenience. As an example, he states that Verizon was able to have employees dedicated to working only on the "wholesale" carrier circuits.

With the enactment of the TA96, however, Mr. Dawson reports that Verizon's distinctions between "retail" and "wholesale" facilities were changed. He observes that CLECs are not limited to historic definitions of "wholesale" and "retail" interconnections but instead have the ability to interconnect with Verizon at any technically feasible location. While interexchange and wireless carriers had a clear historic preference to interconnect at Verizon central offices, Mr. Dawson believes that CLECs have more options. Mr. Dawson also testifies that the advent of modern electronics has blurred the need for these distinctions. Modern electronics, he avers, allow great flexibility for the use of facilities and today it is possible, even easy, to share "retail" and "wholesale" traffic on the same facilities. In fact, he continues, at the network transport level this is done routinely and is also very possible and quite achievable at the field level. In the end, he states, all that matters is that each type of traffic ends up at the right terminating location in the Verizon tandem—an activity that is easily achievable in the modern tandem office.

Nevertheless, Mr. Dawson contends, Verizon continues to maintain its unnecessary distinction between retail and wholesale facilities. He characterizes Verizon's policy as requiring "separate but equal" new facilities for CLEC interconnection. Even though existing facilities already carrying retail traffic could accommodate a CLEC's wholesale traffic as well, Mr. Dawson asserts that Verizon's policy amounts to nothing more than another delay tactic amid a pattern of constantly shifting excuses and policies that are a pretext to make interconnection as difficult as possible.

Mr. Dawson testifies further that Verizon does not treat all customers the same when it comes to turning up new services. He states that he knows of a number of instances when Verizon has installed new services at retail locations in less than 30 days. He attributes Verizon's quick service to retail customers to its need to compete for such customers with CLECs. Mr. Dawson believes that Verizon has created an internal workflow and paperwork process that allows it to handle large customers in an efficient way. In contrast, when a CLEC seeks a similar or same service for wholesale use, however, Mr. Dawson contends that Verizon is unwilling to act quickly. He suggests that Verizon's failure to provide NCC with circuits in a short period of time may be indicative of internal systems established at Verizon to slow the CLEC process. In an attempt to satisfy its nondiscrimination obligations to CLECs, Mr. Dawson asserts that Verizon seeks to provide "separate but equal" treatment to CLECs, which, in his opinion, results in discriminatory treatment to CLECs. He notes first that Verizon has created a new department to deal with CLECs. He reports that all CLEC interface with Verizon must pass through this CLEC department and this is the CLEC's only point of contact with Verizon. While such separate treatment is not necessarily bad, his concern is that in actual practice CLECs experience a lot of delays and problems that are not faced by the large retail customer or other carriers. Mr. Dawson testifies further that the new CLEC department at Verizon seems to be in a state of constant turmoil with a lot of employee churn and with inexperienced account representatives being assigned to CLECs. In practical terms, he states that the CLEC department is often a bottleneck for a CLEC and is one reason in his experience why CLECs do not receive service of the same quality as that provided to large retail customers and to other carriers.

Another reason for what he characterizes as the inferior service that CLECs receive from Verizon is the creation by Verizon of policies that are unique to CLECs. Mr. Dawson claims that there is no way for a CLEC to know that such policies exist, which he contends are usually sprung on CLECs in the midst of trying to actually implement interconnection. The result of Verizon's policies, he avers, has always been delays in network implementation.

Mr. Dawson wants to make clear in his testimony that he believes that there is a difference in acceptable time frames for implementing a new network versus the time frames involved with growing an existing network. He states that the former situation is the one faced by NCC. Mr. Dawson emphasizes that establishing the initial interconnection is critical to the success of a CLEC and time is usually of the essence to a startup CLEC like NCC. Until the network is up and running, he explains that NCC can not exchange traffic with Verizon, can not sell to customers, and ultimately can not get any revenues. Mr. Dawson asserts that the inability to get trunks connected to Verizon will stop a CLEC dead in its tracks. Very few CLECs have sufficient funding, he continues, to patiently wait while Verizon, as he puts it, plays games and delays network implementation. Mr. Dawson states that time is money, and most CLECs, like NCC, have sufficient funds to get into business but do not have unlimited funds to wait out endless delays. Mr. Dawson believes that Verizon knows this and has displayed what he considers passive aggressive behavior with start-up CLECs. Although Verizon is friendly enough in discussions, he testifies that Verizon seems to constantly spring new reasons for delays in the initial interconnection with its network. After having worked with dozens of Verizon interconnections, he is of the opinion that Verizon delays CLECs purposefully in order to hamper their efforts to get into business.

With regard to Ms. Allison's claim that interconnections with wireless carriers should be considered as evidence of Verizon's willingness to interconnect with competitors, Mr. Dawson argues that there are several theoretical problems with comparing interconnections with CLECs and wireless carriers. He states that the first problem with looking at locations where Verizon connects with wireless carriers in its network is that most of these locations are probably not interconnection points. In his consulting role, Mr. Dawson testifies that he works with a number of wireless carriers. In his experience, the typical network for a wireless carrier is very different from the typical CLEC network. While it is true that wireless carriers have interconnection agreements with ILECs like Verizon, Mr. Dawson asserts that the typical wireless carrier (cellular and PCS providers) will have only a few locations where it actually interconnects with an ILEC and that are governed by the interconnection agreement. An interconnection agreement between Verizon and a wireless carrier will describe how the two carriers will exchange traffic. He reports that typically there are only a few locations in any state where a wireless carrier chooses to exchange traffic with a LEC. Mr. Dawson explains that traffic is usually exchanged on trunks that typically (but not always) connect between the wireless switch locations, often referred to as MTSOs, and the LEC network. In addition to a handful of connections to its switch, he notes that the typical wireless carrier usually maintains many locations in its network that are not interconnection points. As an example, he observes that a wireless carrier might have only one switch in a state but may have hundreds of antenna sites. Typically a wireless carrier will purchase retail facilities from the LEC in the form of T1s to connect its switch to each antenna site. Mr. Dawson avers that wireless carriers generally are the largest purchasers in the country of retail T1s. He states that these T1 connections are typically used by the wireless provider to carry the traffic to or from its switch at the MTSO and the antenna sites. This type of connection is not "interconnection," according to Mr. Dawson, since these connections are not used to interchange traffic between the wireless carrier and Verizon. Instead, he continues, these routes are considered to be "inside" of the wireless carriers own network. Mr. Dawson asserts that interconnection only occurs on jointly provided routes where the wireless carrier and the LEC exchange traffic.

While he admits that he has no way of knowing, Mr. Dawson suspects that most of the wireless carrier and Verizon interconnection points identified by Ms. Allison are actually locations where wireless carriers are actually purchasing retail facilities. Mr. Dawson reiterates his point that locations where retail tariffed services are purchased are not interconnection points and have no relevance to this case. The fact that a wireless carrier has an interconnection agreement with Verizon does not mean, he argues, that every place where the wireless carrier purchases facilities is subject to or is in any way a part of those agreements. According to Mr. Dawson, when a wireless carrier buys a retail T1 the wireless carrier looks like any other business that buys T1s and in such cases there are no interconnection issues.

Mr. Dawson contends further that a more important reason to remove any discussion of wireless interconnections from this docket is that wireless carriers are not subject to the same interconnection rules as are CLECs, and for this reason he believes that talking about wireless carriers is a waste of time. CLECs' interconnections, he points out, are governed by rules that are defined in the TA96. Wireless carriers also have interconnection agreements with ILECs, but their agreements, while similar to CLEC agreements in many ways, are, according to Mr. Dawson, governed by different statutes and FCC rulings. He testifies that the TA96 lays forth very specific rules that govern CLEC interconnection and these rules are not identical to the rules that govern wireless interconnection. Moreover, while he agrees with Ms. Allison that competition exists between Verizon and wireless carriers, Mr. Dawson argues that the existence of competition does not somehow mean that what applies to CLECs automatically applies to wireless carriers. He maintains that there is a huge body of regulatory history to show that just the opposite is true.

With regard to NCC's intended service area, Mr. Lesser objects to Ms. McKernan's statement that Verizon had no idea that NCC intended to serve DeKalb until after Verizon moved to dismiss the complaint. On February 19, 2002, three days before Verizon's motion to dismiss, Mr. Lesser points out that he stated in an e-mail to Ms. McKernan that certain trunks would allow NCC's local customers in DeKalb to receive toll calls. (See NCC Exhibit 2, Attachment P-015) He also states that he applied for NXX codes for both Leaf River and DeKalb. While NCC received an NXX code for Leaf River, Mr. Lesser testifies that NCC was unsuccessful in the lottery for a DeKalb NXX code. He states that NCC has not re-entered the lottery for a DeKalb NXX code because NCC does not have the money to market to customers since it has spent so much on litigation with Verizon.

Mr. Dawson also discusses NXX code assignment. He maintains that NCC's lack of an NXX code should not have delayed its interconnection with Verizon. According to Mr. Dawson, Verizon differs from other ILECs in that it has created a very regimented set of CLEC rules that dictate to the CLEC how it must conduct business with Verizon. He indicates that these rules tend to take on the effect of law in the way that Verizon interprets them. As an example, Mr. Dawson observes that Ms. Allison states that Verizon could not process an Access Service Request ("ASR")[6] from NCC without having the number prefix field completed. Mr. Dawson maintains that Verizon could have done so if it wanted to. When NCC has interconnected with other carriers like Qwest and SBC, Mr. Dawson relates that interconnection trunks were ordered and installed before NCC's prefixes were effective. He therefore concludes that carriers other than Verizon are not as inflexible in the way they deal with CLECs. Mr. Dawson argues that this requirement that certain fields on an ASR must be completed in order to complete a trunk order amounts to an "unwritten rule" of Verizon, and the arbitrary and unwritten nature of these rules has been at the heart of Mr. Lesser's complaint with Verizon nationwide since day one.

Mr. Dawson contends that Verizon could have discussed this issue with Mr. Lesser and could have processed ASRs without the number field completed. While he acknowledges that NCC could not actually receive traffic until such time that it actually had valid numbers operating, Mr. Dawson asserts that there is no reason why the lack of numbers should delay the physical connection of the trunks between the two parties. Because other regional bell operating companies do not make this distinction, Mr. Dawson does not believe that Verizon should do so. In fact, he continues, requiring this of NCC automatically extends the time that it would take NCC to interconnect. He maintains that the most efficient way for a CLEC to put together a working network is to be able to do things simultaneously. In other words, he believes that it is far more efficient for a CLEC if trunks are being built at the same time that numbers are being ordered. Mr. Dawson testifies that in this manner numbers can be tested and activated a few days after they are effective. By requiring steps like this to be done in sequence, rather than simultaneously, he argues that Verizon has automatically extended the time it takes for a CLEC to effectuate an interconnection. Mr. Dawson testifies that this is just one small example of the arbitrary way that Verizon has interpreted how it should interface with CLECs. He notes that there is nothing in the TA96 that requires numbers to be in place before trunks can be ordered – this is just another arbitrary and unwritten rule from Verizon.

Mr. Lesser also takes issue with Mr. Bartholomew's statement that NCC never indicated to him that it found problematic any of his answers to the fiber build inquiry. Mr. Lesser relates that on February 21, 2002, he sent Mr. Bartholomew the following e-mail:

> I'm sorry to ask you so many questions. SBC and Quest in all their territories have never put the requirements of interconnection on us that Verizon has put on us. Some places we have fiber, some we have copper. In no places do they make a distinction between "Wholesale" and "Retail" [sic] To both of them, fiber is fiber and copper is copper. I have

[6] Ms. Allison describes the ASR as the industry's official interconnection order form. She states that the ASR was developed by the Ordering and Billing Forum, which is a telecommunications industry forum whose purpose is to address order and billing communication between the members of the telecommunications community. Ms. Allison testifies that the ASR contains necessary and critical information for the proper installation, completion, and billing of interconnection.

> been able to just tell them where our office is and we are up in thirty days after I place the orders. This process that Verizon has set up, is so foreign to me, you are going to have to walk me through it. Some of the terms that Verizon uses are not industry standard terms so I have no idea what they mean.
>
> I will check back with the realtor about the address again. Do you have an actual street address so I can confirm that he is looking at the correct building? Is this supposed to be a multi tenant building? Do you see multiple CLLI codes in this building?
>
> I'm sure there are plenty of buildings with capacity with copper. We are only going to use a few T1's [sic]. Possible as little as two.
>
> I understand that Verizon's policy is to make a distinction between, "Retail" fiber muxes and, "Wholesale" fiber muxes. Does Verizon also make this same distinction for copper wires/outside plant? Are there "Retail" and "Wholesale" telephone poles? I really don't understand Verizon's position. I looked over the interconnection agreement and I don't find anywhere that it says I have to interconnect with fiber. Could you please explain to me why I have to use a "Wholesale" fiber mux. Is this just Verizon's policy? Does Verizon consider all telephone polls and wire, "Retail facilities." How will this work with Unbundled Network Elements? Is Verizon not going to allow me to provision Unbundled Network Elements on copper wires? Are they going to put restrictions on how I use them? I don't understand why I can't order T1's [sic] using Unbundled Network Elements or Entrance facilities that ride copper and use those T1's [sic] for my interconnection trunks.
>
> Before I send the realtor out on a wild goose chase, can you tell me how many, "Wholesale" fiber muxes there are in DeKalb? It is a small town, I can't imagine that there could be many of them. There may be a lot of fiber muxes, in DeKalb, but I wouldn't think there are many, "Wholesale" fiber muxes.
>
> The realtor told me that he once spoke to a Verizon rep who said they can install fiber in any building in DeKalb in thirty days. Is this true?
>
> Thank you for your help. (NCC Exhibit 2, Attachments P-016 and P-017)

Instead of receiving a response from Mr. Bartholomew explaining that there must be some misunderstanding, as he perceives Verizon's position to be today, Mr. Lesser testifies that he heard nothing about a misunderstanding until reading Verizon's prepared testimony in this proceeding.

Other Verizon behavior that Mr. Lesser finds questionable is Ms. McKernan's use of a forecast form in Microsoft Excel format and Mr. Bartholomew's suggestion that NCC use the ASRWeb. Mr. Lesser asserts that Ms. McKernan knew that NCC could not write in the Microsoft Excel format accurately. Moreover, he asserts that much of the information that Ms. McKernan asked of him in the forecast form was information that Verizon already possessed or did not need for a forecast. He accuses Verizon of having him do "busy work." As for Mr. Bartholomew's suggestion that NCC use the ASRWeb to obtain pre-approval of a sample ASR, Mr. Lesser maintains that doing so was not very helpful. Mr. Lesser indicates that the ASRWeb would accept any valid industry standard ASR. To his chagrin, however, the ASRWeb does not review submissions for consistency with Verizon's own internal policies.

Furthermore, although Verizon gave NCC alternatives to a dedicated facility, Mr. Lesser maintains that the alternatives were not realistic. He asserts that Ms. McKernan's option of leasing a dedicated facility still requires that a dedicated facility be built. Mr. Lesser adds that Verizon would not allow NCC to lease a facility on a shared end-user multiplexer. The second option, he continues, was to lease facilities from some other existing wholesale carrier. Mr. Lesser contends that this was not a viable alternative either. NCC insists that it makes no sense for it to have to lease from, and rely upon, a competitor to successfully interconnect with Verizon, which is required by the TA96 to interconnect with NCC directly. Mr. Lesser reports that the final alternative offered by Ms. McKernan was to co-locate at Verizon's central office. Mr. Lesser complains that not only would this require NCC to pay otherwise unnecessary co-location fees to Verizon, but it would also require NCC to build a facility at that location—an undertaking that could take a substantial period of time. With this in mind, he reiterates that NCC's goal was to avoid a delay so it could begin competing with Verizon at the earliest possible date.

With regard to Ms. Allison's criticism of NCC's business plan, Mr. Lesser responds that he is running a small business and that there is no reason for him to have a written business plan. He states that he has never done so and maintains his plan in his head. As to the lack of traffic since the interconnection was completed, Mr. Lesser asserts that Verizon has ruined him. He suggests that it is not surprising that NCC does not have many calls since all of NCC's marketing funds have gone toward legal fees. The lack of calls, he continues, is testimony to the abuse NCC has received. Mr. Lesser testifies that NCC marketed in West Virginia and lost a big part its customer's business because NCC could not perform due to Verizon. He avers that he was not going to make that same mistake twice. Clearly, Mr. Lesser observes, Ms. Allison has never run her own business. He states that she is used to being in a business where the customer has no choice. This is simply not the case for CLECs, he notes. Mr. Lesser laments that CLECs do not have the same guarantee that Verizon has in Illinois that it can never lose money. If NCC makes a mistake, he adds, it is out of business. Mr. Dawson adds that Verizon has no business judging NCC's plans for how to conduct business, nor should it need any proof of NCC's marketing intentions as a precursor to getting interconnected.

NCC concedes that some of the delays after it filed its complaint with the Commission were not Verizon's doing. Mr. Lesser states that as a small company, NCC only has so many resources. He avers that NCC normally would have done many of the interconnection tasks before contacting the ILEC. Because, however, of the poor treatment NCC received in West Virginia concerning interconnection, Mr. Lesser testifies that he contacted Verizon first since he worried that NCC would again meet with the "policy" to refuse to interconnect at a shared facility. He avers that NCC was in no position to wait six to nine months for a "dedicated" multiplexer to be built in Illinois before interconnecting. Mr. Lesser also explains that NCC certainly did not want to apply for prefixes as long as Verizon was insisting on imposing this "dedicated" multiplexer policy on NCC, as NCC would have lost the prefixes while waiting for the multiplexer and/or fiber build to be installed. The North American Numbering Plan Administrator ("NANPA") requires all prefixes to be active within six months. Mr. Lesser asserts that there is no way Verizon would have been able to activate the prefixes in time if it adhered to the "dedicated" multiplexer policy.

Despite acknowledging that some of the delays may have been its own doing, NCC concludes that Verizon has violated the Act. Specifically, NCC argues that the aforementioned conduct by Verizon violates subsections (1), (2), (3), (5), (6), (8), and (11) of Section 13-514. NCC adds that Verizon's policy is inconsistent with the legislative findings in Section 13-102(d), (e), and (f) and thwarts the policy goals identified in Section13-103(a). While NCC's complaint included several prayers for relief, the only relief that NCC continues to seek is a Commission decision finding Verizon in violation of Section 13-514, reimbursement of NCC's costs and expenses in bringing this action, and a determination that Verizon must pay the Commission's expenses in investigating this complaint.

B. Verizon's Position

Verizon steadfastly denies that it ever had the sort of policy described by NCC or ever engaged in any other anticompetitive behavior. Verizon witness McKernan describes her interaction with NCC as its Account Manager. She testifies that she is one of ten Verizon Account Managers that act as liaisons between CLECs wishing to interconnect with Verizon and other Verizon employees who actually implement the interconnection. Ms. McKernan states that she first became aware of NCC's interest in interconnecting in Illinois when she received the aforementioned December 7, 2001 e-mail from Mr. Lesser. She characterizes Mr. Lesser's estimate of his needs associated with long distance traffic as somewhat unclear. The request concerning long distance traffic reads as: "We will need less than twenty-eight T1's [sic] or one DS3 for long distance, IXC traffic. I would be satisfied if we had ten T1's [sic]. We could even get by with four T1's [sic]. If four T1's [sic] is an unrealistic expectation on my part, please let me know. I may be able to work within the parameters that you set." (NCC Exhibit 1, Attachment C-032) She also notes his inquiry regarding a fiber build and the time-frame for interconnection. Ms. McKernan's account of the e-mails that she and Mr. Lesser exchanged on December 11, 2001 is consistent with Mr. Lesser's account of those e-mails.

In her e-mails with Charles Bartholomew regarding Mr. Lesser's fiber build question, Ms. McKernan relates that Mr. Bartholomew told her, "VZwest does not require a fiber build in order to interconnect. CLECs may use leased facilities, collocation, or fiber." (NCC Exhibit 1, Attachment C-034) Although she believes that this should have been the end of Mr. Lesser's fiber build inquiry, Ms. McKernan testifies that she took it upon herself to rephrase Mr. Lesser's question using terminology that she heard in the context of NCC's disputes with Verizon in West Virginia. Because Mr. Lesser used the term "fiber-build" in his inquiry, Ms. McKernan states that she thought that he was probably trying the raise the same issue that was being addressed in West Virginia. By using terminology that she thought she had heard used in connection with the West Virginia issue, Ms. McKernan claims that she thought she was assisting Mr. Lesser in obtaining a response to the question he had intended to raise. For this reason, she states that she then relayed to Mr. Bartholomew the following: "This customer is interested in using a existing enterprise services mux at the location. Would we be able to place the trunks on that type of facility? Verizon East has a policy against such an arrangement." (Id.) Despite asking the question, Ms. McKernan professes to not know what it means. She claims further that she did not have a specific type of facility in mind when she used the phrase "existing enterprise services mux." Ms. McKernan does not believe that she ever held herself out to NCC as a technical expert and did not mean to convey that message if NCC ever understood her to be a technical expert.

Mr. Bartholomew responded to Mr. McKernan's e-mail by saying, "We received word from Product Management that the Verizon West policy is the same as the East. The CLEC may not terminate interconnection facilities on a retail facility." (NCC Exhibit 1, Attachment C-033) Mr. Bartholomew testifies that at the time he understood the phrase "enterprise services mux" to mean a retail service, such as a DS1 Primary Rate Interface ("PRI")[7] or a business dial-tone line. "Enterprise," he adds, is the title of Verizon's corporate division that handles the provisioning of retail services. He claims further to have confirmed his understanding of the phrase's meaning through a telephone call with Verizon witness Allison. To do so was necessary, he continues, because, to the best of his knowledge, the term is not commonly used with regard to interconnection in any of the seven states, including Illinois, where he is responsible for facilitating the CLEC interconnection process. Mr. Bartholomew asserts that Ms. Allison concurred with his understanding of the phrase's meaning and informed him that Verizon East does not use PRIs or business dial-tone lines for CLEC interconnections. He also testifies that his manager, Candy Thompson, was present during his telephone conversations with Ms. Allison. Ms. Allison confirms Mr. Bartholomew's recount of the telephone conversation. She adds that the problem with using a PRI or business dial-tone line for CLEC interconnection is that both are line side (as opposed to trunk side) connections to the switch. As such, she continues, usage on the trunk side could not be tracked or recorded, and accurate billings could not be rendered.

[7] A DS1 PRI is a line with 23 data capable channels or frequencies with one additional channel used for maintaining and monitoring the 23 channels.

With regard to the specifics of his response to Ms. McKernan, he states that he used the phrase “retail facility” because he thought it more accurately described PRIs and business dial-tone lines, which are used to provide retail services. Mr. Bartholomew testifies that he did not intend for the phrase “retail facility” to mean any facility, regardless of its type, that is also used by a retail customer. He claims that it never crossed his mind that one could attribute such a meaning to that phrase. Mr. Bartholomew asserts that he has never heard of Verizon facilities being separated into retail and wholesale categories.

As Mr. Lesser indicates in his testimony, Ms. McKernan informed him via e-mail on December 13, 2001 that: “Unfortunately the West policy is the same as the East, as you can see in the message below. We will not terminate interconnection trunks on a retail/enterprise facility.” (NCC Exhibit 1, Attachment C-033) With regard to the phrase “retail/enterprise facility,” Ms. McKernan again claims that she did not have any specific type of facility in mind when she used that phrase. She states that the phrase simply resulted from her combining part of the phrase “existing enterprise services mux” and the phrase “retail facility,” since that was the phrase used by Mr. Bartholomew. Ms. McKernan testifies that Mr. Lesser never asked her about any of the terms used in the e-mail forwarded to him regarding his fiber build inquiry and that she did not learn of his objections to the answer until she heard that NCC had filed a complaint with the Commission.

The next day Ms. McKernan relates that she received an e-mail from Mr. Lesser asking whether capacity existed for NCC to collocate with Verizon at a specific location, how long it takes to establish collocation, and how long it would take to get interconnection trunks if NCC collocated in a central office. (See Verizon Exhibit 1.0, Attachment DMM-3) She states that she forwarded Mr. Lesser’s e-mail to Mr. Bartholomew for assistance in answering the questions. On December 18, 2001, Mr. Bartholomew provided NCC with contact information for the individual who could answer collocation questions. He provided Mr. Lesser with additional information regarding interconnection as well. To Ms. McKernan and Mr. Bartholomew’s knowledge, NCC did not collocate in a Verizon facility.

On February 14, 2002, nine days after the effective date of the interconnection agreement between NCC and Verizon, Ms. McKernan testifies that she sent an e-mail to Mr. Lesser although she did not think that she had any obligation to do so. In her e-mail, she inquired whether NCC intended to interconnect, and if so, she asked NCC to provide forecast information and to identify the location of its intended Point of Interconnection (“POI”). (See Verizon Exhibit 1.0, Attachment DMM-6) Later that same day, she reports that Mr. Lesser responded by asking Verizon to identify POIs where Verizon has sufficient capacity to turn up service in 30 days. As for forecast information, she states that Mr. Lesser included as an attachment a copy of his December 7, 2001 e-mail requesting interconnection. On February 15, 2002, Ms. McKernan informed Mr. Lesser that Verizon was looking into his request for service locations and that his forecast information was not sufficient. She testifies that the forecast information was not sufficient because it did not include much of the information on Verizon's forecast form. Later the same day Mr. Lesser sent additional information to Ms. McKernan. NCC also filed its complaint with the Commission on February 15, 2002.

On February 19, 2002, Mr. Bartholomew sent Ms. McKernan a response to Mr. Lesser's inquiry concerning POIs. Mr. Bartholomew testifies that this was the first time that he had been asked to identify a location for a CLEC to place its switch. Despite not knowing NCC's particular business needs, however, he identified three locations in DeKalb where he thought Verizon would have sufficient capacity. Mr. Bartholomew states that he did not know at this point in time that NCC had filed its complaint against Verizon. Ms. McKernan testifies that she sent Mr. Lesser the three locations and also informed him that if the December 7, 2001 e-mail was referring to interLATA toll, NCC would have to order Switched Access Feature Group D trunks via the ASR process. (See Verizon Exhibit 1.0, Attachment DMM-8) She testifies that she raised the question of Feature Group D trunks in light of statements made to her by Mr. Bartholomew. (See Verizon Exhibit 1.0, Attachment DMM-11) In his response on the same day, Mr. Lesser indicates that he would be calling a realtor and anticipated being up and running within 30 days in light of the available capacity. Ms. McKernan also notes that Mr. Lesser questioned the need for Feature Group D trunks. On February 20, 2002, Ms. McKernan states that she cautioned Mr. Lesser not to assume that he would be operating within 30 days and advised him that he would need to order Feature Group D trunks. (See Verizon Exhibit 1.0, Attachment DMM-9) Thereafter, she states that the e-mail exchanges primarily occurred between Mr. Bartholomew and Mr. Lesser.

Also on February 20, 2002, Mr. Bartholomew reports that Mr. Lesser sent an e-mail complaining that of the three locations identified, the first appeared to be central office while the second and third were towers with a small portable shed at the base of each. Although he admits that he did not check what type of building the facilities at the locations were housed in, it is simply because he chose the locations based on facility inventory, not physical appearance. Mr. Bartholomew maintains that each of the three locations are suitable for CLEC interconnection and adds that all three host other carrier's interconnections today. On the following day, he testifies that he informed Mr. Lesser that the one actual building among the three locations was not a central office and that he would try to identify some additional locations. Additionally, Mr. Bartholomew told Mr. Lesser that if NCC had any locations in mind, he would check for capacity there.

On February 21, 2002, Mr. Bartholomew received the aforementioned e-mail from Mr. Lesser containing a long list of questions. (See NCC Exhibit 2, Attachments P-016 and P-017) Mr. Bartholomew testifies that he perceived Mr. Lesser's e-mail to consist almost entirely of extraneous comments, and that he did not generally understand where Mr. Lesser was coming from. The only aspect of this e-mail that Mr. Bartholomew says he felt inclined to respond to was Mr. Lesser's request for a more specific street address for the first location that he had provided earlier. He was unable to provide a more specific street address but he did provide Mr. Lesser with a fourth location to consider on February 25, 2002.

From February 28 to March 13, 2002, Mr. Lesser and Mr. Bartholomew exchanged additional e-mails regarding other interconnection locations and Mr. Lesser's selection of a location. On the latter date, Mr. Bartholomew states that he and Mr. Lesser held their first interconnection planning meeting, at which Mr. Lesser identified the location at which NCC wished to interconnect. Mr. Bartholomew testifies that the first interconnection planning meeting typically is not held until after a CLEC identifies an interconnection location. He relates that he nevertheless held the meeting because he thought it would provide him an opportunity to explain the remaining steps in the interconnection process. Mr. Bartholomew states that he was also surprised that NCC had not yet applied for a NXX code since he understands that most CLECs apply for a NXX code early in the process so that their interconnection is not delayed while waiting for NANPA to assign them a code. Additionally, although Mr. Lesser questioned the value of the meeting, Mr. Bartholomew asserts that the meeting allowed him to relay information to NCC and provided him an opportunity to learn a great deal of relevant information, i.e.: NCC's chosen interconnection location and that NCC had not yet applied for a NXX code.

In a March 13, 2002 e-mail he received from Mr. Lesser, Mr. Bartholomew notes NCC's expectation that its ASR orders would be installed within 15 days of ordering. In his e-mail, Mr. Lesser also states that he is unclear why Verizon would not agree to the 15 day interval until after NCC filed a complaint with the Commission. While Mr. Bartholomew acknowledges that Verizon had not committed to its customary 15 day time frame for ASRs, he asserts that he did tell Mr. Lesser in a December 18, 2001 e-mail that Verizon usually completes ASRs in 15 days. Mr. Bartholomew maintains that the complaint before the Commission had nothing to do with the 15 day commitment. He also points out that the 15 day commitment is generally conditioned on Verizon's receipt of an error-free ASR and the assumption that no other carrier would request capacity at the specific location prior to Verizon's receipt of the ASR.

In the weeks following March 13, 2002, Mr. Bartholomew reports that NCC was still waiting for assignment of a NXX code from NANPA, which it needed to submit a complete ASR. While it waited, he testifies that NCC inquired on March 27, 2002 about getting pre-approval of a sample ASR. Mr. Bartholomew states that on March 29, 2002, he informed Mr. Lesser about the ASRWeb, which can be used to pre-validate ASRs, and noted that he was still waiting for NCC to identify a DeKalb contact so that a site visit could be conducted. (See Verizon Exhibit 2.0, Attachment CB-9) On May 6, 2002, however, Mr. Bartholomew received an e-mail from Mr. Lesser complaining that Verizon had not responded to his inquiry about pre-approval of an ASR. (See Verizon Exhibit 2.0, Attachment CB-10) After directing Mr. Lesser's attention to the ASRWeb again, Mr. Bartholomew testifies that Mr. Lesser asked him to personally review NCC's ASR before submitting it. Mr. Bartholomew testifies that he agreed to do so.

Mr. Bartholomew testifies that NCC finally submitted its ASRs to Verizon on July 24, 2002. On August 21, 2002, he states that Verizon completed the ASRs. Mr. Bartholomew testifies further that Verizon submitted an ASR to NCC on August 6, 2002, which NCC completed on September 10, 2002. He states that this action completed the physical interconnection between Verizon and NCC and that the period of time from July 24 to September 10, 2002 amounts to 33 business days. Ms. Allison points out that NCC's own expert witness agrees that the period of time between NCC's submission of its ASRs to Verizon and Verizon's completion of NCC's interconnection was reasonable and comparable to the amount of time taken by other ILECs. (See Verizon Exhibit 3.0, Attachment KJA-9)

Verizon argues that none of its interactions with NCC support the claim that Verizon will not allow CLECs to share existing retail facilities. According to Verizon witness Allison, Verizon permits CLECs to interconnect at existing network facilities regardless of whether the facilities are also utilized by other customers, including retail customers. The only caveats that she adds are that the facilities (1) must be of a type to which it is technically feasible to interconnect, and (2) must have sufficient capacity available for the interconnection.

As of October 2002, Ms. Allison asserts that Verizon had completed 31 interconnections at existing facilities with 14 wireless carriers and three CLECs. (See Verizon Exhibit 3.0, Attachment KJA-1) The meaning of this list, she argues, is that Verizon did not build new facilities for the purpose of interconnecting with CLECs. She also points out that the three CLECs are interconnected on copper, rather than fiber, facilities. Because the interconnections took place over copper, she believes that it is more likely that Verizon interconnected the three CLECs on existing facilities that are shared with retail customers, rather than wholesale customers. Ms. Allison contends further that the interconnections with wireless carriers on existing facilities are relevant since they refute NCC's claim that Verizon acts to impair competition by delaying interconnection with competitors. Clearly, she avers, wireless carriers compete with Verizon.

Ms. Allison adds that she is not aware of any instance when Verizon refused to perform an interconnection on existing facilities in Illinois. She states further that after reviewing, at the request of NCC, five to ten CLEC requests for interconnection where the CLEC sought less than two T1s, Verizon could not identify any instances where a CLEC was required to wait for Verizon to build fiber facilities against the CLEC's wishes. Verizon also emphasizes that NCC has not identified any other CLECs that have been delayed or impeded by the alleged Verizon policy.

In response to Mr. Dawson's testimony that Verizon's network developed into categories of retail and wholesale facilities, Ms. Allison asserts that, based on her time as a Network Planner for central office and interoffice equipment, the establishment or augmentation of switching equipment and fiber routes was not segregated into retail and wholesale facilities. She also notes that Mr. Dawson had admitted that he does not have any actual knowledge of Verizon's network in Illinois. Ms. Allison suspects that he simply assumed that Verizon's network in Illinois may have developed in the manner that other carriers' networks developed in other parts of the country.

With regard to NCC's allegations of delay, Ms. Allison states that she does not believe that Verizon delayed NCC's interconnection in Illinois. Rather, she opines that any delay in NCC's interconnection resulted directly from NCC's own actions (or lack thereof). Ms. Allison maintains that NCC had not completed the steps necessary for interconnection that it needed to take on its own behalf prior to July 24, 2002, when NCC submitted its ASRs to Verizon. Once Verizon received NCC's ASRs, she believes that Verizon completed NCC's interconnection within a reasonable period.

To initiate interconnection, Ms. Allison explains that it is customary for the CLEC to have an interconnection agreement with the ILEC. She states that it is also routine for the CLEC to provide traffic forecasts, and to submit ASRs as the CLEC's official interconnection order. In addition to these items, however, she notes that there are also several steps that a facility-based CLEC, like NCC, must perform before it will be in a position to interconnect and, as a result, before it will be in a position to submit its ASRs. A facility-based CLEC, she points out, must have a switch, a physical location to interconnect, and a NPA/NXX code from NANPA. Also, Ms. Allison continues, before service can be offered in Illinois, a CLEC's tariffs must be filed and approved by the Commission. As of December 7, 2001, when NCC claims to have initiated its interconnection request, Ms. Allison asserts that NCC did not have any of these requirements completed.

With regard to the submission of traffic forecasts, Ms. Allison notes that NCC was required by its interconnection agreement with Verizon to provide a traffic forecast. She testifies that NCC did not do so until February 15, 2002, the same day NCC filed its complaint against Verizon. Ms. Allison suggests that NCC provided its traffic forecasts on this date so that it could claim in its complaint that Verizon was to blame for NCC not yet being interconnected. She argues, however, that it was the delay by NCC that slowed the interconnection process. Ms. Allison adds that Mr. Lesser's trunk needs in the December 7, 2001 e-mail could not be used as a traffic forecast because they were imprecise.

Ms. Allison is also quick to observe that Mr. Lesser's March 13, 2002 selection of an interconnection location did nothing to hasten the interconnection process. Under the interconnection agreement, she notes that NCC had the responsibility of choosing its own interconnection location. Despite the requirements of the interconnection agreement, however, Ms. Allison recounts how Mr. Lesser expected Verizon to identify suitable interconnection locations. She argues that Verizon can not be held responsible for Mr. Lesser finding the offered locations unsuitable since Verizon did not know NCC's business plan or traffic forecasts.

Ms. Allison further observes that NCC has transmitted very little traffic since completing interconnection with Verizon. She suggests that Mr. Lesser's lack of a full business plan committed to paper should be considered as evidence that delays to NCC's entering the Illinois market and harm to its business were not caused by Verizon.

Verizon also questions, however, Mr. Lesser's statement that he did not read the entire chain of e-mails attached to the e-mail he received from Ms. McKernan on

December 13, 2001. Verizon suggests that Mr. Lesser instead read the entire e-mail chain but selectively relied on only those parts that would advance NCC's litigation interests. As for the fact that NCC only seeks to recover its costs in the complaints it has brought against Verizon, Verizon speculates that NCC intends to use any favorable rulings from state commissions to support claims for substantial monetary damages in court.

With regard to Steven Hartmann's February 14, 2002 letter to NCC, Verizon maintains that the letter must be viewed in the proper context. Specifically, Verizon argues that Mr. Hartmann intended to only discuss matters pertaining to West Virginia. The "special exception" and "courtesy" he references have nothing to do with Illinois, according to Verizon.

In the end, Verizon argues that this case boils down to NCC improperly relying on and misinterpreting communications from Ms. McKernan, a simple administrative coordinator. Specifically, Verizon maintains that Mr. Lesser's reliance on Ms. McKernan's remarks in the December 13, 2001 e-mail was misplaced. At worst, Verizon believes that it is only guilty to being a party to unintended miscommunication and misunderstanding with NCC. If this is the situation, Verizon asserts that NCC's own acts directly led to any miscommunications. What Verizon claims is particularly egregious is what it characterizes as NCC's new argument made for the first time in its Initial Brief. Verizon complains that NCC is attempting to amend its complaint by now arguing that Verizon violated Section 13-514 of the Act by assigning a poorly equipped administrative employee to act as NCC's contact with Verizon. Verizon argues that for NCC to make this claim at this point deprives Verizon of the opportunity to present evidence and denies it due process.

In light of the foregoing, Verizon concludes that it has not violated Section 13-514 of the Act. Verizon contends that NCC has not satisfied its burden of proof on any of its claims. Furthermore, Section 13-514 requires a carrier to have "knowingly" or "unreasonably" impeded competition. Verizon insists that the evidence does not establish that Verizon willfully delayed NCC. Finally, Verizon argues that the obligation to interconnect that NCC claims Verizon violated flows from Section 251(c) of the TA96. Verizon asserts that the Commission can not find that a violation of Section 251(c) of the TA96 serves as a basis for finding a violation of Section 13-514 because Verizon has at all times complied in good faith with the requirements of the TA96.

An additional claim that Verizon makes concerns what it perceives to be an allegation of rate-of-return fraud. Verizon argues that NCC has claimed that Verizon is attempting to defraud ratepayers by including in their rates the cost of dedicated facilities for CLECs that are simply not needed. Verizon asserts that NCC did not offer any evidence of fraud in its direct case and only a few lines of testimony in its rebuttal. Because Verizon believes that any fraud claim is not well grounded in fact and lacks evidentiary support, the Commission must sanction NCC pursuant to Section 13-515(j) of the Act.

IV. CONCLUSION

The facts of this case are obviously many. Before determining whether they amount of violations of subsections (1), (2), (3), (5), (6), (8), and (11) of Section 13-514 or otherwise impede competition in a manner contrary to Section 13-514, however, a word on NCC's decision to interconnect with Verizon is necessary. Verizon has suggested that NCC's complaint is misplaced because Verizon is not the ILEC in the Leaf River Exchange. While this is true, it is still appropriate for NCC to interconnect with Verizon to serve the Leaf River Exchange since all of the Leaf River Telephone Company's long distance traffic travels through a Verizon tandem. Moreover, the record also supports NCC's assertion that it intended to offer service in the DeKalb Exchange, where Verizon is the ILEC. Accordingly, Verizon is a proper respondent in this proceeding. With regard to the alleged violations of the Act, addressing subsections (2), (3), (5), and (11) of Section 13-514 will be easiest and will therefore be undertaken first.

Subsection (2) pertains to the unreasonable impairment of the speed, quality, or efficiency of services used by another telecommunications carrier. NCC has not alleged that the actual facilities eventually provided by Verizon are of a lower speed, quality, or efficiency than that provided by Verizon to itself or others; nor has NCC alleged that the facilities eventually provided have otherwise adversely affected the services that NCC seeks to provide to end-users. Therefore, Verizon can not be found to have violated subsection (2).

Subsection (3) relates to the unreasonable denial of a request of another provider for information regarding the technical design and features, geographic coverage, information necessary for the design of equipment, and traffic capabilities of the local exchange network. While NCC requested Verizon's assistance in identifying locations acceptable to Verizon for interconnection,[8] the record does not reflect any other requests by NCC to Verizon for the information described in subsection (3). The record does reflect that Mr. Bartholomew provided NCC with approximately four locations where he claims to have believed that Verizon had capacity availability for interconnection. Because the usefulness of this information to NCC is uncertain, it can not be said that Verizon denied a request for information (by providing useless information) and therefore, in light of the circumstances, a violation of subsection (3) can not be found.

Subsection (5) concerns the unreasonable refusal or delaying of access by any person to another telecommunications carrier. For a violation of this subsection to be found, NCC would have to show that Verizon's actions impeded another person's access to NCC. While this arguably may have been the result of Verizon's alleged actions, NCC has not offered any specific evidence that any particular person's access to NCC was refused or delayed. Accordingly, no finding can be made that Verizon knowingly impeded competition in the manner described in subsection (5).

[8] That NCC would request assistance in identifying a POI acceptable to Verizon is understandable in light of NCC's belief that Verizon would only allow NCC to interconnect at particular locations.

Subsection (11) regards violations of Section 13-801 of the Act. This section of the act only applies to telecommunications carriers subject to regulation under an alternative regulation plan pursuant to Section 13-506.1 of the Act. Verizon is not subject to such an alternative regulation plan and therefore can not be found to be in violation of Section 13-506.1 or subsection (11) of Section 13-514.

Whether Verizon violated subsections (1), (6), or (8) of Section 13-514 or otherwise impeded competition in a manner contrary to Section 13-514 requires more analysis of the facts than that conducted above. Before engaging in an analysis, however, it must be pointed out that in finding that Verizon's actions do not amount to violations of subsections (2), (3), (5), and (11), any facts associated with subsections (2), (3), (5), and (11), when considered with other facts, may still be considered evidence of anti-competitive behavior. Other information that the parties have asked be considered when analyzing NCC's claims under subsections (1), (6), and (8) are the decisions of the West Virginia Public Service Commission in Case No. 02-0254-T-C, North County Communications Corporation v. Verizon West Virginia Inc. and the Maryland Public Service Commission in Case No. 8881, Core Communications, Inc. ("Core") v. Verizon Maryland, Inc. These cases involve facts similar to those in the instant proceeding. Verizon believes that the West Virginia decision supports its position while NCC contends that the Maryland decision supports its position.

Among the allegations raised by NCC against Verizon West Virginia Inc. is that the ILEC employed the same anti-competitive policy prohibiting "shared facilities" as that complained of here. On August 28, 2003, the West Virginia Public Service Commission found that no such company wide policy existed but recognized that Verizon West Virginia Inc. representatives did tell NCC that it could not use a "non-wholesale market entrance" and needed to build an entrance facility. The West Virginia Public Service Commission determined that Verizon West Virginia Inc. could have fulfilled NCC's initial order without the need for additional facilities and attributed the statements by the Verizon West Virginia Inc. representatives to poor customer service and remote management. The West Virginia Public Service Commission directed Verizon West Virginia Inc. to take specific steps to ensure that similar problems do not occur in the future. In the Maryland complaint, Core alleged that Verizon Maryland, Inc. unreasonably delayed its interconnection through the use of a similar policy against using "shared facilities." On February 26, 2004, the Maryland Public Service Commission found in favor of Core. These decisions are interesting and informative. Notably, while only one of the state commissions found the existence of the alleged policy, both determined that the Verizon affiliates had at least represented to a CLEC that the CLEC may not interconnect on facilities serving retail customers.

In determining the merits of NCC's claims under subsections (1), (6), and (8), what is first apparent is that neither NCC nor Verizon is completely free from fault for the delay in NCC's entry into the Illinois market. NCC even takes responsibility for some of the delay. When viewed in its entirety, the evidence, and the demeanor of those presenting it, does favor one party's position over the other's.

Among the first allegations of anti-competitive conduct is NCC's claim that Verizon acted improperly when it informed NCC on the second business day after its request for interconnection that it must first enter into an interconnection agreement with Verizon. Verizon informed NCC of such on December 11, 2001. According to the parties, NCC's adoption of an existing interconnection agreement became effective on February 5, 2002. While Verizon need not actually interconnect with a CLEC prior to entering into a interconnection agreement, it must act in a reasonable and timely manner when negotiating an interconnection agreement with a CLEC. Fifty-six calendar days is arguably a long period for the adoption of an existing interconnection agreement, but because the facts surrounding the negotiations are not known, it can not be said that Verizon failed to act appropriately or otherwise knowingly impeded competition in the time it took for the interconnection agreement to become effective.

Another area of concern that arises from the very beginning of NCC's efforts to interconnect with Verizon in Illinois is the degree to which NCC should have relied on the statements of its Account Manager, Dianne McKernan. Ms. McKernan testifies that her role is to serve as the liaison between NCC and Verizon. The record also reflects her statement to Mr. Lesser that she will be the "Account Manager for all of your Verizon needs coast to coast." (NCC Exhibit 1, Attachment C-002) Yet despite her job as the interface between NCC and Verizon, she disputes the notion that NCC should have been able to rely on the statements that she made to it. Instead, she suggests that NCC had a responsibility to evaluate her responses to its inquiries and determine for itself whether the responses were reliable. This testimony is in contrast to her position in the West Virginia proceeding. NCC has presented for impeachment purposes that portion of Ms. McKernan's testimony before the West Virginia Public Service Commission in which she indicates that Mr. Lesser could be expected to take her statements as truthful, accurate, and non-fabricated. (Tr. 657-663) The reason for Ms. McKernan's change of position is unclear.

What is clear is that a CLEC should be able to rely on the statements of Verizon's Account Managers. To suggest that a CLEC ought to conduct its own evaluation of the statements of an ILEC's representative is absurd and calls into question the usefulness of the Account Manager position. While, as Ms. McKernan asserts, it is not expected that one person would possess all of the technical and administrative knowledge necessary to complete an interconnection, it is anticipated that the person providing a CLEC information would understand the concepts and terms being discussed and certainly not invent new terms as Ms. McKernan admits she has done. Setting aside her many years of experience, Ms. McKernan's assertions that she never held herself out to NCC as a technical expert carry little weight in light of the fact that she apparently felt qualified to modify and add to Mr. Bartholomew's e-mail responses to NCC's inquiries. Therefore, NCC's reliance on the statements of Verizon's representative, whether of a technical or procedural nature, can not be found unreasonable.

The actions of Verizon's representative, however, no matter how frustrating, do not necessarily amount to a knowing impediment to the development of competition. More analysis is needed before reaching a conclusion on this issue. Under cross-examination, Ms. McKernan testified that she and some of Verizon's other Account Managers had only two or three days of training for their current positions working with CLECs. She stated that she believed more training is warranted and added that the West Virginia Public Service Commission thought so too. (Tr. 697) While Ms. McKernan may be an intelligent and motivated employee, without the proper training by Verizon she is ill-equipped to do her part in fostering a competitive telecommunications market in Illinois. Whether Verizon knowingly intended this result or knew this would be the likely result is uncertain without further analysis. The benefit to Verizon, however, is clear if its liaisons with all CLECs wishing to interconnect lack sufficient training to expediently and efficiently arrange interconnections.

An evaluation of the actual statements of Verizon's Account Manager to NCC is the next step in this inquiry. NCC claims that Ms. McKernan's statements in a December 13, 2001 e-mail demonstrate the existence of Verizon's policy against interconnection by a CLEC at an existing facility also serving Verizon retail customers. Verizon argues that NCC has misunderstood what was meant by Ms. McKernan's e-mail, and had Mr. Lesser read the entire e-mail chain,[9] he would have realized his misunderstanding. (See NCC Exhibit 1, Attachment C-033 through C-036) A review of the entire e-mail chain and Verizon's attempts to explain it, however, is not as exculpatory as Verizon would hope. As evidence that the alleged policy does not exist, Verizon points to Mr. Bartholomew's statement that "VZwest does not require a fiber build in order to interconnect. CLEC's may use leased facilities, collocation, or fiber." (Id., Attachment C-034) From his e-mail, it is not clear that Mr. Bartholomew understood that Mr. Lesser was asking about interconnecting at an *existing* retail facility. Upon receiving Ms. McKernan's follow up e-mail specifying interconnection at an "existing enterprise services mux," Mr. Bartholomew stated that, "… the Verizon West policy is the same as the east. The CLEC may not terminate interconnection facilities on a retail facility." (Id., Attachment C-033) Ms. McKernan's direct response to NCC incorporating Mr. Bartholomew's statement is clear, "Unfortunately the West policy is the same as the east, as you can see in the message below. We will not terminate interconnection trunks on a retail/enterprise facility." (Id.) Although when Mr. Lesser first read the e-mail in its entirety is unclear, it is easy to see how NCC could understand Verizon to have a policy against CLECs interconnecting at locations also serving retail customers.

But this e-mail chain alone does not firmly establish the existence of the alleged policy and a violation of Section 13-514. In fairness to Verizon, its efforts to explain what its employees meant in the e-mail must be considered. Mr. Bartholomew claims that he understood Ms. McKernan to be referring to a retail service, such as a PRI or a business dial-tone line when she used the phrase "enterprise services mux." He asserts that it did not occur to him that Ms. McKernan could have been referring to

[9] Notably, Steven Hartmann, Verizon's Senior Counsel for Carrier Relations, received at least a portion of the e-mail chain. (See NCC Exhibit 1, Attachment C-035)

interconnection by a CLEC on a facility already serving retail customers. He adds that Ms. Allison confirmed his understanding. This interpretation of Ms. McKernan's question, however, is puzzling and raises additional questions regarding how Mr. Bartholomew and Ms. Allison came to their understanding of Ms. McKernan's question. Because, according to Verizon's witnesses, usage on a PRI or business dial-tone line could not be tracked or recorded, and accurate billings could not be rendered, these retail services are not used for interconnection by CLECs. Given the impracticality, technical problems, and, at a minimum, apparent rarity of such an arrangement, it is odd that Mr. Bartholomew and Ms. Allison thought that NCC was asking to interconnect through such retail services.[10] That their confusion over the question would lead to the interpretation they arrived at is even more odd since, as Mr. Bartholomew states, the term "enterprise services mux" is not commonly used with regard to interconnection in any of the seven states, including Illinois, where he is responsible for facilitating the CLEC interconnection process. If, as they contend, they were not sure what Ms. McKernan meant in her question and the interpretation they apparently developed was not practical or even possible, why did they not simply ask Ms. McKernan what she meant rather than guess at the meaning of her question? The explanation of why they answered the way they did is not logical, and hence, can not be accorded significant weight. Rather, it suggests an attempt to explain away damaging evidence.

Mr. Bartholomew's response to a February 21, 2002 e-mail from Mr. Lesser further casts Verizon's position in doubt. Mr. Lesser's e-mail contained several questions, many of which concerned NCC's understanding that Verizon distinguishes between retail and wholesale facilities. (See NCC Exhibit 2, Attachments P-016 and P-017) Rather than dispel NCC of any misunderstandings consistent with Verizon's position in this case, Mr. Bartholomew testifies that he perceived Mr. Lesser's e-mail to consist almost entirely of extraneous comments, and that he did not generally understand where Mr. Lesser was coming from. This is not the response one would expect from someone who's job it is facilitate CLEC understanding of Verizon's interconnection process. On the contrary, the response of Verizon's representative suggests an unwillingness to meaningfully assist NCC, which only impedes competition. The response also does little to refute the notion that Verizon knew NCC was struggling to understand Verizon's interconnection process. Moreover, even assuming for the moment that the alleged policy does not exist, it is difficult to believe that Verizon could not know that such a response would hamper NCC's competitive efforts.

Other evidence that Verizon offers to refute the existence of a policy against interconnecting at shared facilities is a list of locations where Verizon states that it has used shared facilities for local interconnections. (See Verizon Exhibit 3.0, Attachment KJA-1) According to the list, as of October 2002, Verizon has used shared facilities to interconnect at 32 locations with 11 wireless carriers and 3 CLECs (including NCC, which received interconnection on an existing shared facility after initiating this

---

[10] Mr. Bartholomew's manager, Candy Thompson, was also present for the telephone conversation between he and Ms. Allison. The record does not reflect her opinion of Mr. Bartholomew and Ms. Allison's interpretation of Ms. McKernan's question.

proceeding).[11] At 29 of the locations, the interconnections occur over copper facilities. With regard to the "copper interconnections," Ms. Allison is not certain but believes that it is likely that Verizon interconnected these carriers on existing facilities that are shared with retail customers. Verizon has no specific response to Mr. Dawson's argument that wireless carriers and CLECs are not directly comparable, other than to assert that wireless carriers compete with Verizon. Mr. Dawson testifies that the typical wireless carrier will have only a few locations in any state where it actually exchanges traffic with a local exchange carrier. He is concerned that not all of the "interconnections" listed on Verizon's list are actually locations where traffic is exchanged.

While Verizon's list suggests that interconnections on existing retail facilities may occur, the lack of details about the interconnections limits the weight that the list can be given. Ms. Allison herself is unsure of whether the copper facilities represent shared facilities. Mr. Dawson's reservations about the nature of the wireless interconnections on the list are also legitimate and Verizon's lack of a response thereto diminishes further the value of the list. Although it is possible that the wireless interconnections reflected in the list are the "few locations" where wireless carriers actually exchange traffic with Verizon, it is simply not appropriate to assume that this is the case. Therefore, Attachment KJA-1 to Verizon Exhibit 3 can not be considered dispositive evidence that Verizon freely allows interconnecting carriers to interconnect on existing facilities already serving retail customers.

On its face, Verizon's argument that it could not identify, upon the request of NCC, any instances where a CLEC was required to wait for Verizon to build fiber facilities has some merit. But again, the value of this rebuttal evidence is questionable in light of the limited review conducted by Verizon. Ms. Allison testifies that Verizon reviewed five to ten CLEC orders for one T1 and found no instances during the prior 12 months where the CLEC was required to wait for fiber facilities against the CLEC's wishes. She offers Attachment KJA-3 to Verizon Exhibit 3, Verizon's response to an NCC interrogatory, to support Verizon's position.[12] While the results of Verizon's review may be accurate, it is difficult to assign much weight to such a narrow review. Information that would help in assessing the value of Verizon's review include the number of CLECs that requested interconnection over the prior 12 months, how many T1s the CLECs typically request, and whether Verizon specifically selected the CLECs that it chose to review when answering NCC's interrogatory. Without knowing more, it is simply not possible to determine whether Verizon's limited review of CLEC interconnections sufficiently refutes NCC's claims of an anti-competitive policy.

Compounding the damage to Verizon's position that the alleged anti-competitive policy does not exist is the aforementioned February 14, 2002 letter from Verizon's Senior Counsel for Carrier Relations. (See NCC Exhibit 2, Attachment S) Prior to this

[11] Verizon states that the list reflects interconnections with 14 wireless carriers. The list itself, however, only reflects 11 wireless carriers.

[12] Both the interrogatory and Verizon's response refer to situations where CLECs have ordered three or fewer T1s in the past 12 months. Verizon's response indicates that it could not identify any such instances where the CLEC ordered three or fewer T1s.

letter, Verizon West Virginia Inc. interconnected NCC on facilities already serving end-user customers. Upon completing construction of a dedicated facility for NCC's use, Verizon West Virginia Inc. sought to move NCC's traffic to the dedicated facility. In a February 11, 2002 letter, NCC balked at the idea unless Verizon agreed to allow NCC to interconnect on existing facilities serving retail customers in other jurisdictions until dedicated facilities were completed. (See NCC Exhibit 2, Attachment T) Mr. Hartmann's letter responding to NCC's proposal very clearly refers to NCC's interconnection over facilities serving end-user customers in West Virginia as a "courtesy" and "special exception." If NCC objects to Verizon's interconnection protocols, Mr. Hartmann advises NCC to "tee up" the issue in Illinois or other jurisdictions. As NCC suggests, if no policy against interconnecting over "retail facilities" exists, why does Verizon's Senior Counsel for Carrier Relations speak of a courtesy and special exception? Moreover, the NCC letter to which Mr. Hartmann responds clearly references NCC's difficulties in interconnecting in other venues—specifically, that it "is being told that it may not interconnect at a 'retail facility' and must, instead, await a dedicated fiber 'wholesale' build-out." (Id.) Mr. Hartmann makes no attempt to characterize NCC's statement as a mere misunderstanding, as Verizon argues that it is in this proceeding. Verizon's argument that Mr. Hartmann's letter must be viewed in the proper context and has nothing to do with Illinois is unpersuasive, particularly when read in conjunction with NCC's letter.

When viewed in their entirety, the actions and statements of those representing Verizon in its dealings with NCC support a finding that Verizon prohibited NCC from interconnecting over facilities already serving retail customers. Although NCC did eventually interconnect over such facilities, it was only *after* NCC filed its complaint against Verizon and raised concerns in other jurisdictions. Because knowledge of this practice was shared by so many within Verizon and ample opportunity existed for Verizon to dispel any misunderstandings but did not, the claim that this dispute simply stems from a misunderstanding rings hollow. The record supports a finding that Verizon impeded the development of competition by delaying NCC's entry into the competitive telecommunications market and that Verizon could have only done so knowingly. Whether Verizon's Account Manager in fact knew that she was engaging in anti-competitive conduct need not be determined since at a minimum Verizon appears to have knowingly left its Account Manager ill-equipped to perform her duties.

This is not to say that Verizon must always interconnect a CLEC on facilities already serving retail customers when asked to do so. Clearly it need not do so when capacity and technical feasibility are an issue. In this instance, however, there is no indication that capacity and technical feasibility are in question. In the absence of such limitations, no competitively neutral reason is conceivable for an ILEC to distinguish between facilities serving retail customers and wholesale customers for purposes of interconnection.

Unrelated to Verizon's policy of prohibiting interconnection on "retail" facilities, yet warranting comment is Verizon's rigid enforcement of its ASR submission requirements. From the record, it would appear that Verizon is stricter in its ASR submission requirements than other ILECs. While being so is not necessarily improper, it is unclear whether some of Verizon's requirements are designed to delay interconnection rather than facilitate interconnection. Insufficient information exists to direct specific revisions to Verizon's practices in this regard, but Verizon is advised to review its ASR submission requirements to ensure that the proper balance is made between having adequate information to advance interconnection and complying with the Commission's goal of fostering competition. Verizon may want to consider seeking the comment of CLECs in conducting its review.

The fact that NCC lacks an elaborate business plan or significant traffic in Illinois does not lessen the significance of Verizon's actions. While it is unclear what impact the lack of a formal business plan may have on NCC's efforts, it is conceivable that a small company primarily operated by a single person would not have a formal written business plan. Also plausible is NCC's explanation for the absence of traffic. NCC has obviously spent a significant amount of resources on litigation with Verizon and may not have sufficient funds to market its services at this time. Furthermore, Verizon's claim that NCC intends to use any favorable rulings from state commissions to support claims for substantial monetary damages in court is unsupported in the record.

Accordingly, the evidence in this proceeding supports the finding that Verizon knowingly impeded the development of competition by (1) unreasonably refusing or delaying interconnection with NCC in violation of Section 13-514(1) of the Act; (2) unreasonably acting in a manner that had a substantial adverse effect on the ability of NCC to provide service to customers in violation of Section 13-514(6); and (3) unreasonably delaying implementation of its interconnection agreement with NCC by unreasonably delaying, increasing NCC's costs, and impeding the availability of NCC's services to consumers generally in violation of Section 13-514(8). This conclusion in large part stems from the finding that Verizon maintained a policy, at least within the State of Illinois, that would prohibit NCC from interconnecting with Verizon over existing facilities that already serve retail customers. Only after NCC sought relief from the Commission did Verizon allow NCC to interconnect on such facilities and begin its efforts to "repackage" evidence damaging to its position.

An additional argument that must be addressed is Verizon's claim that NCC has alleged rate-of-return fraud by Verizon and, because NCC has not supported its claim, the Commission must sanction NCC pursuant to Section 13-515(j) of the Act. Although NCC did in fact make some statements regarding rate-of-return fraud, Verizon's concerns over the statements can not be taken seriously in light of the extreme paucity of such statements. Accordingly, NCC will not be sanctioned with regard to Verizon's concern over rate-of-return fraud allegations.

Section 13-515(g) of the Act directs the Commission to assess the parties for all of the Commission's costs of investigation and conduct of the proceedings brought under Section 13-515 including, but not limited to, the prorated salaries of Staff, attorneys, administrative law judges, and support personnel, dividing the costs according to the resolution of the complaint. As indicated above, Verizon can not be held entirely responsible for the delay associated with NCC's entry into the Illinois competitive telecommunications market, a statement with which NCC agrees. Examples of delay attributable to NCC include its failure to select an interconnection location sooner than March 13, 2002 and delayed responses to certain Verizon e-mail inquiries. In light of NCC bearing some of the responsibility for the delay and given the parties have mutually agreed to extend this proceeding well beyond the statutory time frame established in Section 13-515, the appropriate portion of the Commission's costs that NCC should pay is 50%. Verizon shall pay the remaining 50% of the Commission's costs. In accordance with the Act, NCC and Verizon shall pay their respective amounts owed into the Public Utility Fund within 60 days after receiving notice of the assessments from the Commission.

With regard to attorney's fees and costs, Section 13-516(a)(3) directs the Commission to award damages, attorney's fees, and costs to any telecommunications carrier that was subjected to a violation of Section 13-514. NCC has requested that its attorney's fees and costs of bringing this complaint be paid in the event that it prevail. However, given the extended length of this proceeding as well as NCC's own responsibility for the delay, the Commission finds that it would be unjust to allocate all of NCC's attorney's fees to Verizon. Therefore, Verizon is directed to pay NCC's attorney's fees and costs up to August 21, 2002, the date by which Verizon completed the ASRs. NCC and Verizon shall be responsible for paying their own attorney's fees and costs after that date. NCC shall make a Compliance Filing with the Chief Clerk's Office within 15 days of the Commission's final resolution of this matter detailing its attorney's fees and costs.

V. FINDINGS AND ORDERING PARAGRAPHS

The Administrative Law Judge, having considered the entire record, is of the opinion and finds that:

(1) NCC is a telecommunications carrier certificated to provide resold and facilities-based local and interexchange telecommunications services in Illinois;

(2) Verizon is a telecommunications carrier certificated to provide local and intraMSA interexchange telecommunications services in Illinois;

(3) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(4) the facts recited and conclusions reached in the prefatory portion of this Decision are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;

(5) NCC's complaint should be granted to the extent set forth above;

(6) pursuant to Section 13-515(g) of the Act, NCC and Verizon should pay the Commission's costs for investigating and conducting this proceeding as described in Section IV, above; and

(7) pursuant to Section 13-516(a)(3) of the Act, Verizon should pay NCC's attorney's fees and costs of bringing this complaint up to August 21, 2002; as detailed in a Compliance Filing to be filed by NCC with the Chief Clerk's Office within 15 days of the Commission's final resolution of this matter.

IT IS THEREFORE ORDERED that the complaint filed by North County Communications Corporation and Verizon North, Inc. and Verizon South, Inc. is hereby granted in part as described in the prefatory portion of this Decision.

IT IS FURTHER ORDERED that North County Communications Corporation and Verizon North, Inc. and Verizon South, Inc. shall pay the Commission's costs in this proceeding as described in Finding (6).

IT IS FURTHER ORDERED that Verizon North, Inc. and Verizon South, Inc. shall pay North County Communications Corporation's attorney's fees and costs of bringing this complaint as described in Finding (7).

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding that have not been specifically ruled upon are hereby disposed of in a manner consistent with the conclusions contained herein.

By Order of the Commission this 6th day of October, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman